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OUR FILE NO. 347155-29

VIA E-FILE AND FACSIMILE (415) 522-3636

Magistrate Judge Joseph C. Spero
450 Golden Gate Avenue
San Francisco, CA 94102

Re: Network Appliance, Inc. v. Sun Microsystems, Inc., U.S.D.C., Case No. C-07-06053 EDL (JCS); Sun Microsystems, Inc. v. Network Appliance, Inc. C-07-05488 EDL (JCS) and C-08-01641 EDL (JCS)

Dear Magistrate Judge Spero:

At the request of your Honor's clerk, Sun Microsystems, Inc. ("Sun") and Network Appliance, Inc. ("NetApp") jointly submit this letter to request guidance regarding the settlement proposal schedule for the above-mentioned litigation.

The March 3, 2008 and April 4, 2008 Notices of Settlement Conference and Settlement Conference Orders both state that "No later than April 23, 2008, Plaintiff(s) shall make a settlement proposal, in writing, with a copy to the undersigned. No later than April 30, 2008, Defendant shall respond and make a counter-proposal, in writing, with a copy to the undersigned." Sun understood that NetApp would make an initial proposal, and Sun would respond and make a counteroffer by April 30, 2008. NetApp understood that both Sun and NetApp would submit proposals on April 23, 2008, and both parties would respond and make counteroffers by April 30, 2008.

Sun's Position

Sun understood that the intent of the June 24 Settlement Conference was to reach a global settlement for all litigation between NetApp and Sun. Submitting separate settlement proposals for the different cases would be inefficient, confusing and would lead to piecemeal negotiations. During the February 25, 2008, telephone conference with your Honor, the parties and the Court discussed that the Settlement Conference would encompass each of the two actions then on file, and the Court stated that NetApp would first provide a global settlement offer, Sun would then respond, and the parties would then meet to discuss settlement prior to the Settlement Conference. Therefore, Sun believed that NetApp, who initiated the first lawsuit, would (and should) submit its settlement proposal first; Sun will then respond and make a counteroffer by April 30, 2008.

NetApp's Position

As stated above, the Court's settlement conference orders **both** require the "Plaintiff(s)" in each case to make a settlement proposal no later than April 23, 2008. Because NetApp is the plaintiff



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in one case and Sun is the plaintiff in the other, it was NetApp's understanding that the parties would simultaneously exchange opening settlement proposals today. Sun's concern that a simultaneous exchange will result in piecemeal negotiations is unfounded; NetApp intends to provide a global settlement offer and expects Sun to do the same. The representative for NetApp who participated in the February 25 telephone conference has no memory of the Court expressing a preference for NetApp to submit its settlement proposal first. Indeed, Sun insists that it is "net plaintiff" in these related cases. NetApp believes that a simultaneous exchange of opening proposals and counter-proposals is both fair and efficient, as the parties will be better able to evaluate their respective settlement positions before the Settlement Conference.

The parties are available to discuss this matter at your convenience.

Respectfully,

/s/ Christine Corbett

Christine Corbett

DLA PIPER

/s/ Jill Ho

Jill Ho

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